

ANNA SCHALKEWICZ

IBLA 80-388

Decided May 30, 1980

Appeal from a decision of the Sacramento, California State Office, Bureau of Land Management, holding Mejr Oro Pais Lot No. 5, placer mining claim abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976:
Assessment Work -- Mining Claims: Abandonment -- Mining
Claims: Assessment Work

Under 43 CFR 3833.2-1(c), the owner of an unpatented mining claim located on Federal lands after Oct. 21, 1976, shall, on or before Dec. 30 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim.

APPEARANCES: Anna Schalkewicz, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Anna Schalkewicz, hereinafter appellant, has appealed from a decision dated January 29, 1980, of the Sacramento, California State Office, Bureau of Land Management (BLM), holding Mejr Oro Pais Lot No. 5, placer mining claim abandoned and void. The mining claim was located on December 1, 1978, and was filed for recordation on January 22, 1979. The State Office decision was based on the failure to file an affidavit of assessment work or a notice of intention to hold the claim for calendar year 1979 as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). The pertinent regulation is 43 CFR 3833.2-1(c).

On appeal, appellant contends that she was not entirely familiar with all the rules, that she was not aware of the yearly filings, and that she requested forms in September, but she did not receive the forms until mid-December and BLM apparently sent them too late.

The record indicates that evidence of assessment work notice for the period of September 1, 1978, through September 1, 1979, was not filed in the BLM office until January 3, 1980. The claim was located on December 1978, in Kern County, and recorded on January 22, 1979.

Under 43 CFR 3833.2-1(c), the owner of an unpatented mining claim located on Federal lands after Oct. 21, 1976, shall, on or before December 30 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intent to hold the mining claim.

Accordingly, under 43 CFR 3833.2-1(c), the assessment notice or notice of intent to hold was due in the BLM office on or before December 30, 1979.

Under 43 CFR 3833.4(2), failure to file such instruments as are required by sections 3833.1 and 3833.2 within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site and it shall be void. See C. F. Linn, 45 IBLA 156 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

James L. Burski
Administrative Judge

